In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 573

GUSSIE P. CHAPMAN, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (R. 52-58) is reported at 14 T.C. 943. The opinion of the Court of Appeals (R. 78) is reported at 191 F. 2d 816.

JURISDICTION

The judgment of the Court of Appeals was entered on October 10, 1951. (R. 79.) The petition for a writ of certiorari was filed on February 7, 1952, within the time allowed by an order entered by Justice Douglas on December 31, 1951. (R. 81.) The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Whether the income tax determined to be due from the petitioner for 1946 was properly computed in accordance with Section 400 of the Internal Revenue Code.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the applicable statute and regulations are set forth in the Appendix, *infra,* pp. 9-20.

STATEMENT

The facts as found by the Tax Court (R. 52-55) and which are not in dispute may be summarized as follows:

Petitioner is an individual residing in Helena, Montana, who filed her 1946 individual income tax return with the Collector of Internal Revenue for the District of Montana. (R. 52.)

During the taxable year, petitioner was employed as a file clerk by the Bureau of Internal Revenue. In her 1946 return she reported as her only income a salary of $1,606.27 (R. 52) and claimed the following deductions (R. 53):

Contributions		$ 11.00
Taxes:		
Real Estate	$13.42	
Telephone and Tolls	10.09	23.51
Loss from Theft		65.00
Medical Expenses		32.90
Total Deductions		$132.41

Petitioner filled in the tax computation section on page 3 of her return, which section is headed (R. 53):

Tax Computation—For Persons Not Using Tax Table on Page 4	
Line 1—Adjusted gross income	$1,606.27
Line 2—Deductions	132.41
Line 3—Net income	$1,473.86
Line 4—Exemption	500.00
Line 5—Difference	$ 973.86
Line 6—Tentative Tax	70.00
Line 7—5% of amount entered on line 6	3.50
Line 8—Combined normal tax and surtax	$ 66.50

The tentative tax in the amount of $70, entered on line 6 on page 3 of petitioner's return, was not computed at the rates prescribed by Sections 11 and 12 of the Internal Revenue Code but was taken from the tax table on page 4 of Form 1040 and Section 400 and represents the amount of tax for an individual with one exemption having an income of at least $950 but not more than $975. (R. 53-54.)

Petitioner claimed a refund of the difference between the amount withheld from her salary and the tax liability shown on her return, computed as follows (R. 54):

Amount of tax withheld	$ 193.90
Tax liability per return	66.50
Overpayment claimed	$ 127.40

The amount of $127.40 was refunded to petitioner prior to the audit of her return. (R. 54.)

After examination, a 30-day letter was issued to petitioner by the Collector under date of December 29, 1947, explaining that the deductions she had claimed in the amounts of $10.09 for federal excise taxes and $32.90 for medical expenses were not deductible for income tax purposes for the reason that excise taxes may be deducted only as business expenses or expense incurred in the production of income, and that her medical expenses failed to exceed five per cent of her adjusted gross income. (R. 54.)

The Collector further held that petitioner had used parts of both methods in determining her tax, and since she had failed to indicate a clear election to use either Sections 11 and 12, or Section 400, he computed the liability under the method which produced the smaller tax. Her liability under Sections 11 and 12, based upon the allowable deductions and one personal exemption, was determined to be $193.20, whereas her liability under Section 400, using the tax table provided therein, was determined in the amount of $181. Thus the 30-day letter and the subsequent statutory notice of deficiency determined a deficiency in the amount of $114.50, representing the difference between a liability of $181 and the tax in the amount of $66.50 shown to be due on petitioner's return. (R. 54-55.)

The Tax Court held that the petitioner's income tax for the year 1946 had been properly determined by the Commissioner and so found that there was a deficiency of $114.50 for that year. As to interest claimed by the Government on such sum, the Tax Court held that it had no jurisdiction over matters concerning interest. (R. 57-58).

The Court of Appeals affirmed the decision of the Tax Court for the reasons stated in the latter's opinion. (R. 78-79.)

ARGUMENT

Petitioner asserts that Section 400 of the Internal Revenue Code (Appendix, *infra,* pp. 12-13) has been erroneously interpreted and applied to the facts of her case. Section 400 provides that—

> In lieu of the taxes imposed by sections 11 and 12, there shall be levied, collected, and paid for each taxable year upon the net income of each individual whose adjusted gross income for such year is less than $5,000, and who has elected to pay the tax imposed by this supplement for such year, the tax shown in the following table: * * *

It is evident that when a taxpayer elects the alternative method set out in the above section he must pay the tax which is shown in the table therein and which is also given in the table on page 4 of Form 1040 to which petitioner repeat-

edly refers. By using this tax table the Commissioner determined petitioner's tax to be $181, but she asserts that such amount is excessive because the tax has been imposed on gross income rather than on net income as Section 400 requires. In this connection, she also asserts that the Commissioner failed to allow her the $500 personal exemption as authorized by Section 25 of the Internal Revenue Code (Appendix, *infra,* p. 12), and she also appears to contend that she has been denied the standard deductions.

There is no basis for the petitioner's contention. Petitioner is apparently confused by the appearance of the term "adjusted gross income" in the heading of one column of the tax table in Section 400. But such income (i.e., gross income minus business deductions as allowed by Section 22 (n) of the Internal Revenue Code (Appendix, *infra,* p. 10)) is merely the starting point for the computation which resulted in this tax table. As a first step in the computation, Congress subtracted standard deductions approximating 10 per cent of the various amounts of gross income, and as a second step it subtracted the $500 personal exemption and credits for dependents, if any, Then it computed the tax on the remaining income and set out the resulting figures in the tax table.* See H.

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* Petitioner's adjusted gross income was $1,606.27; her allowable exemption was $500; and the standard deduction of 10 per cent (allowable in 1946 to persons having adjusted

Conference Rep. No. 1203, 77th Cong., 1st Sess., p. 8 (1941-2 Cum. Bull. 509, 510); H. Rep. No. 1365, 78th Cong., 2d Sess., pp. 19, 20 (1944 Cum. Bull. 821, 836, 837); also see Instructions for Tax Table on Page 4 of Form 1040, and Sections 29.400-1 and 29.402-1 of Regulations 111 (Appendix, *infra,* pp. 15-20).

Actually, what the petitioner is contending for is the privilege of subtracting allowable deductions and credits from gross income and then of using the resulting figure, with a minor adjustment, as the starting point for applying the tax table. In other words, she seeks double deductions and credits but such allowances have never been authorized. Petitioner's tax has not only been computed properly but, as the Tax Court pointed out (R. 57), it is less than it would have been if it had been computed under Sections 11 and 12.

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gross income of less than $5,000 only when Section 400 was applied) was $160.63. When these two items are subtracted from $1,606.27, it leaves taxable income of $945.64. The normal tax of 3 per cent and surtax of 17 per cent on the latter sum amounts to $189.13 and under the law for 1946 this could be reduced by an amount equal to 5 per cent of the total tentative tax or by $9.46 which would leave a total tax of $179.67. Under the table (which uses the median figure in the income bracket of $1,600 to $1,625) the tax would be $181. Accordingly the tax as figured above is approximately the same and indicates that the table unquestionably allows deductions and exemptions.

CONCLUSION

As there is no basis for review, the petition should be denied.

Respectfully submitted,

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March, 1952.

APPENDIX

Internal Revenue Code:

SEC. 11 [as amended by Sec. 101 (a) of the Revenue Act of 1945, c. 453, 59 Stat. 556]. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax determined by computing a tentative normal tax of 3 per centum of the amount of the net income in excess of the credits against net income provided in section 25, and by reducing such tentative normal tax by 5 per centum thereof. For alternative tax which may be elected if adjusted gross income is less than $5,000, see Supplement T.
(26 U.S.C. 1946 ed., Sec. 11.)

SEC. 12. SURTAX ON INDIVIDUALS.

(a) *Definition of "Surtax Net Income".*—As used in this section the term "surtax net income" means the amount of the net income in excess of the credits against net income provided in section 25 (b).

(b) [as amended by Sec. 101 (b) of the Revenue Act of 1945, *supra*] *Rates of Surtax.*—There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax determined by computing a tentative surtax under the the follow-

ing table, and by reducing such tentative surtax by 5 per centum thereof:

If the surtax net income is:	The tentative surtax shall be:
Not over $2,000.....	17% of the surtax net income.

* * * * *

(26 U.S.C. 1946 ed., Sec. 12.)

SEC. 22. GROSS INCOME.

* * * * *

(n) [as added by Sec. 8 (a) of the Individual Income Tax Act of 1944, c. 210, 58 Stat. 231] *Definition of "Adjusted Gross Income".*—As used in this chapter the term "adjusted gross income" means the gross income minus—

(1) *Trade and business deductions.*— * * *

(2) *Expenses of travel and lodging in connection with employment.*—

(3) *Reimbursed expenses in connection with employment.*— * * *

(4) *Deductions attributable to rents and royalties.*— * * *

(5) *Certain deductions of life tenants and income beneficiaries of property.*— * * *

(6) *Losses from sales or exchange of property.*— * * *

* * * * *

(26 U.S.C. 1946 ed., Sec. 22.)

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

* * * * *

(aa) [as added by Sec. 9 (a) of the Individual Income Tax Act of 1944, *supra*] *Optional Standard Deduction for Individuals.*—

(1) *Allowance.*—In the case of an individual, at his election a standard deduction as follows:

* * * * *

(B) *Adjusted gross income less than $5,000.*—If his adjusted gross income is less than $5,000, the standard deduction shall be an amount equal to 10 per centum of the adjusted gross income upon the basis of which the tax applicable to the adjusted gross income of the taxpayer is determined under the tax table provided in section 400.

* * * * *

(3) *Method and effect of election.*—

* * * * *

(B) If the adjusted gross income shown on the return is less than $5,000, the standard deduction shall be allowed only if the taxpayer elects, in the manner provided in Supplement T, to pay the tax imposed by such supplement.

(C) If the taxpayer does not signify, in the manner provided by subparagraph (A) or (B), his election to take the standard deduction, it shall not be allowed. If he does so signify, such election shall be irrevocable.

* * * * *

(26 U.S.C. 1946 ed., Sec. 23.)

SEC. 25. CREDITS OF INDIVIDUAL AGAINST NET INCOME.

* * * * *

(b) [as amended by Sec. 102 (a) of the Revenue Act of 1945, *supra*] *Credits for Both Normal Tax and Surtax.*—

(1) *Credits.*—There shall be allowed for the purposes of both the normal tax and the surtax, the following credits against net income:

(A) An exemption of $500 for the taxpayer;

* * * * *

(26 U.S.C. 1946 ed., Sec. 25.)

Supplement T—Individuals with Adjusted Gross Income of Less than $5,000

[as added by Sec. 102 (a) of the Revenue Act of 1941, c. 412, 55 Stat. 687, and amended by Sec. 5 (a) of the Individual Income Tax Act of 1944, *supra*]

SEC. 400 [as amended by Sec. 103 (a) of the Revenue Act of 1945, *supra*] IMPOSITION OF TAX.

In lieu of the taxes imposed by sections 11 and 12, there shall be levied, collected, and paid for each taxable year upon the net income of each individual whose adjusted gross income for such year is less than $5,000, and who has elected to

pay the tax imposed by this supplement for such year, the tax shown in the following table:

If the adjusted gross income is—		And the number of exemptions is—			
		1	2	3	4 or more
At least	But less than	The tax shall be—			
***	***	***	***	***	***
1,600	1,625	181	86	0	0
* *	* *	*	*	*	*

(26 U.S.C. 1946 ed., Sec. 400.)

SEC. 401 [as amended by Sec. 102 (b) of the Revenue Act of 1945, *supra*] DEFINITION OF "EXEMPTION".

As used in the table in section 400, the term "number of exemptions" means the number of the exemptions allowed under section 25 (b) as credits against net income for the purpose of the normal tax and the surtax imposed by sections 11 and 12.

(26 U.S.C. 1946 ed., Sec. 401.)

SEC. 402. MANNER AND EFFECT OF ELECTION.

The election referred to in section 400 shall be exercised in the manner provided in regulations

prescribed by the Commissioner with the approval of the Secretary. * * *

(26 U.S.C. 1946 ed., Sec. 402.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.23(aa)-1 [as added by T. D. 5425, 1945 Cum. Bull. 10]. *Standard Deduction.*—(a) *General.*—For taxable years beginning after December 31, 1943, the taxpayer may elect to take, in addition to the deductions from gross income allowable in computing adjusted gross income, a standard deduction in lieu of all nonbusiness deductions (that is, deductions other than those allowable under section 22 (n)) and in lieu of certain credits allowable to the taxpayer had he not so elected. * * * and, in the case of taxpayers whose adjusted gross income is less than $5,000, about 10 per cent of the adjusted gross income upon which the tax is determined in the table provided in section 400. A taxpayer having adjusted gross income of less than $5,000, who does not elect to pay the tax imposed by Supplement T, may not take the standard deduction.

* * * * *

(b) *Manner and effect of election to take the standard deduction.*—The following rules are prescribed with respect to the manner of signify-

ing an election by a taxpayer to take the standard deduction:

* * * * *

(2) If the adjusted gross income shown on the return is less than $5,000, the standard deduction is allowable only if the taxpayer elects in the manner provided in Supplement T to pay the tax imposed by such supplement. As to the manner and effect of election to pay the tax under Supplement T, see section 29.402-1. * * *

* * * * *

SEC. 29.400-1 [as amended by T. D. 5360, 1944 Cum. Bull. 361; T. D. 5425, 1945 Cum. Bull. 10; and T. D. 5517, 1946-2 Cum Bull. 8]. *Scope and Application of Supplement T.*— * * *

(b) *Taxable years beginning after December 31, 1943.*—For taxable years beginning after December 31, 1943, in lieu of the taxes imposed by section 11 and 12, an individual may elect to pay the tax imposed by section 400 if his adjusted gross income is less than $5,000, regardless of the sources from which such income is derived and regardless of whether such income is computed on the cash basis or on the accrual basis. * * *

* * * * *

To determine the amount of the tax for a taxable year beginning after December 31, 1943, the individual ascertains the amount of his adjusted

gross income, refers to the schedule set forth in section 400 which is applicable to the taxable year, ascertains the income bracket into which such income falls, and, using the number of exemptions (or surtax exemptions) applicable to his case, finds the tax in the vertical column having at the top thereof a number corresponding to the number of exemptions (or surtax exemptions) to which the taxpayer is entitled. Thus, if for 1946 A has adjusted gross income of $4,415 and has three exemptions, including his own exemption, his tax is $481.

* * * * *

SEC. 29.402-1 [as amended by T. D. 5425, 1945 Cum. Bull. 10]. *Manner of election to compute tax under Supplement T.*— * * *

(b) *Taxable years beginning after December 31, 1943.*—For taxable years beginning after December 31, 1943, the taxpayer elects to pay his income tax under Supplement T either by (1) filing a return of his gross income on Form W-2 (Rev.), prescribed in section 29.51-2, or (2) by filing a return on Form 1040 and electing in such return, in the manner prescribed in section 29.23 (aa)-1(b), to take the standard deduction provided in section 23 (aa). * * *

H. Conference Rep. No. 1203, 77th Cong., 1st Sess., p. 8 (1941-2 Cum. Bull. 509, 510):

* * * * *

If the taxpayer elects to use this simplified plan, the amount of the tax may be readily ascertained by reference to a table contained in the bill. This simplified return may be used only where the taxpayer's income is derived solely from salaries, wages, compensation for personal services, dividends, interest, rent, annuities, or royalties. If the taxpayer elects to use this method, no deductions or credits against net income are allowed. In lieu of these deductions and credits, the tax provided in the table represents a reduction, with respect to the average taxpayer in the bracket, of 10 per cent of the tax that would otherwise be payable without such deductions or credits. This 10 per cent reduction has been found to be the effect of the average amount of deductions taken by persons in these brackets. * * *

* * * * *

H. Rep. No. 1365, 78th Cong., 2d Sess., pp. 19-20 (1944 Cum. Bull. 821, 836-837):

* * * * *

Under existing law certain individual taxpayers, in lieu of computing the regular normal tax, surtax, and Victory tax, may elect to pay the tax imposed under the tax table found in Supplement T of the Code. This supplement, comprising sections 400 to 404, inclusive, contains, among the conditions upon its applicability, the re-

quirement that the taxpayer electing it have gross income under $3,000, consisting of salaries, wages, compensation for personal services, dividends, interest or annuities. Section 5 of the bill recasts Supplement T in keeping with the primary objective of simplification. In this connection the scope of the supplement is broadened so that any individual * * * may elect to pay the tax under Supplement T if his adjusted gross income for the taxable year is less than $5,000. The concept of "adjusted gross income" is the device employed for putting taxpayers with different types of income from varying sources in a position of substantial parity so that the simple tax table type of computation will hereafter be available to all persons with adjusted gross income under $5,000. * * *

Supplement T is amended by this section of the bill in the following respects:

(a) It is made applicable to adjusted gross incomes up to $5,000 instead of $3,000.

* * * * *

(d) The single tax table, which is to be incorporated in section 400, is constructed on brackets of $25 with respect to adjusted gross incomes from $550 to $3,000 and on brackets of $50 with respect to adjusted gross incomes of $3,000 or more. In determining the tax payable in each bracket, a standard deduction of 10 per cent of

the adjusted gross income at the midpoint of the bracket is allowed, as compared with the deduction of 6 per cent of gross income used in the table found in existing law.

* * * * *

The tax table under Supplement T automatically provides for one normal tax exemption in the computation of the amounts of tax for each bracket of adjusted gross income. * * *

Instructions for Tax Table on Page 4 of Form 1040 (1946):

Purpose of Table.—The table is a short-cut method of finding your income tax. It is provided by law and saves you the trouble of itemizing deductions and computing your tax on page 3 of the return. The table allows for: (a) Your exemptions—$500 for each person listed in item 1, page 1; (b) charitable contributions, interest, taxes, etc., approximating 10 percent of your income; and (c) the additional 5 percent reduction in both the tentative normal tax and surtax, as provided by the Revenue Act of 1945.

Arrangement of Table.—The table contains income columns and exemption columns. The income columns are headed by the words "At least—But less than." The exemption columns are headed by the numbers 1, 2, 3, 4, etc.

How to Find Your Tax.—Read down the income columns until you find the line that fits the income you reported in item 6 on page 1. Then read across that line until you come to the exemption column which is headed by a number corresponding to the number of persons you listed in item 1 on page 1. The figure you find there is your tax. *Example.*—If your income was $2,245 and you were entitled to three exemptions, you would find your tax opposite the income line "At least $2,225 but less than $2,250." You would read over to the column headed by the figure "3" and thus find your tax was $98.

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